

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000304-001 DT

04/01/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

ANH SPIEK

v.

ANNA SANDATE BUSTAMANTE (001)

JOHN P TATZ

PEORIA CITY COURT
REMAND DESK-LCA-CCC

RECORD APPEAL RULE / REMAND

PEORIA MUNICIPAL COURT

Cit. No. #TR2000007123

Charge: 1) DUI-LIQUOR OR DRUGS/VAPORS/COMBO
2) DUI W/BAC OF .08 OR MORE

DOB: 08/01/53

DOC: 06/13/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since February 9, 2004. This decision is made within 60 days as required by Rule 9.9, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Peoria City Court, and the memoranda submitted by counsel.

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The only issue raised by the Appellant, Anna Sandate Bustamante, is her contention that the trial judge erred in denying her Motion to Dismiss (Motion in Limine) regarding his claim that insufficient evidence of *corpus delicti* existed to warrant the admission in evidence of Appellant's statements admitting that he had been driving the vehicle at the time of the offense.

In Arizona, case law requires proof of the *corpus delicti* independent of a criminal defendant's confession, prior to the admission in evidence of that confession.¹ In the context of a DUI case, *corpus delicti* requires proof by the State of at least a reasonable inference, that some intoxicated person was driving an automobile at the time of the alleged offense.²

In this case, Appellant failed to raise the issue of *corpus delicti* during the trial. Though this Court believes the issue was waived, after reviewing the evidence, it is clear that the trial court properly admitted Appellant's admissions as evidence. The record in this case discloses substantial evidence that corroborates the trial judge's conclusion that the State had established a reasonable inference that it was Appellant driving the automobile at the time of the offense. Independent of Appellant's admissions to the Peoria Police that she was driving was the eyewitness testimony of Peoria Police Officer Dyson. He testified that as he approached Appellant's car, he observed the Appellant sitting in the driver's seat. There was no one else in the car at the time Officer Dyson first observed it. Another individual came out of a convenience store and got into the passenger side of the automobile. Because the officer suspected that Appellant was intoxicated, he asked her to perform field sobriety tests. Of particular note is the fact that Appellant was charged with being in actual physical control of the automobile at the time of the offense, not driving. Clearly, Officer Dyson's eyewitness observations established a reasonable inference that an intoxicated person had committed the offense of being in actual physical control of a motor vehicle with a blood alcohol content in excess of .08 or greater. Substantial evidence exists to support the trial court's conclusion that the State has proven *corpus delicti*. This Court finds no error.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed by the Peoria City Court in this case.

IT IS FURTHER ORDERED remanding this matter back to the Peoria City Court for all other and future proceedings in this case.

/s/ HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT

¹ *State v. Weis*, 92 Ariz. 254, 375 P.2d 735 (1962), *cert. denied*, 289 U.S. 899, 88 S.Ct. 226, 19 L.Ed.2d 221 (1967); *State ex rel. McDougall v. Superior Court*, 188 Ariz. 147, 149, 133 P.2d 1215, 1217 (App. 1996).

² *State ex rel. McDougall v. Superior Court*, 188 Ariz. at 149, 933 P.2d at 1217, citing *State v. Hernandez*, 83 Ariz. 279, 282, 320 P.2d 467, 469 (1958).